

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

**FILED**

MAR 31 2005

  
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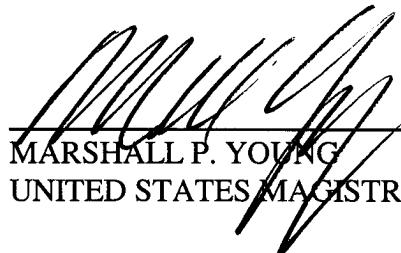
TOBY BOLZER, ) CIV.05-5017-KES  
Petitioner, )  
vs. ) SUPPLEMENTAL FINDINGS  
UNITED STATES OF AMERICA, ) AND RECOMMENDATIONS  
Respondent. )

Petitioner, Toby Bolzer, pro se, filed a response to the government's opposition to his habeas corpus petition, together with a motion to strike the government's opposition for fraud upon the court. The petitioner alleges that the government committed misconduct, and fraud in an attempt to mislead the court into thinking that malice aforethought applies to second degree murder charges. In addition, petitioner re-alleges the same grounds raised in his original petition for habeas relief.

It is my finding and recommendation that the motion to strike the government's opposition for fraud upon the court be denied. It is further my finding and recommendation that the response does not raise any new issues, and therefore, the original findings and recommendations continue to be the findings and recommendations of this Magistrate Judge.

Dated this 31st day of March, 2005.

BY THE COURT:

  
MARSHALL P. YOUNG  
UNITED STATES MAGISTRATE JUDGE

**NOTICE**

The parties have ten (10) days after service of this report and recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. Failure to file timely objections may result in waiver of the right to appeal questions of fact. Objections must be timely and specific in order to require de novo review by the District Court.

[Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990)]

[Nash v. Black, 781 F.2d 665 (8th Cir. 1986)]